

TABLE OF CONTENTS

TITLE 22, DIVISION 6

CHAPTER 8. RESIDENTIAL CARE FACILITIES FOR THE ELDERLY

Article 1. Definitions

	Section
General	87100
Definitions	87101

Article 2. License

License Required	87105
Operation Without a License	87106
Exemption from Licensure	87107
Integral Facilities	87108
Limitations - Capacity and Ambulatory Status	87110
Advertisements and License Number	87111
False Claims	87112
Transferability	87113
Continuation of License Under Emergency Conditions	87114
Posting of License	87115
Program Flexibility	87116
Applicant/License Mailing Address	87117
Nondiscrimination	87118
Facility Hospice Care Waiver	87124.1

Article 3. Application Procedures

Application for License	87218
Criminal Record Clearance	87219
Fire Clearance	87220
Plan of Operation	87222
Disaster and Mass Casualty Plan	87223
Application/Renewal Processing Fees	87224
Commingling of Money	87225
Bonding	87226
Safeguards for Cash Resources, Personal Property, and Valuables of Residents	87227
Application Review	87228
Capacity	87229
Withdrawal of Application	87230
Provisional License	87231
Term of an Initial or Renewal License	87233
Application for Renewal of License	87234
Resubmission of Application	87235
Conditions for Forfeiture of a Residential Care Facility for the Elderly License	87236

TABLE OF CONTENTS (Continued)

Article 4. Administrative Actions

	Section
Denial of Initial License	87340
Denial of a Renewal License	87341
Revocation or Suspension of License	87342
Relocation of Resident - General	87342.1
Licensee Complaints	87343
Inspection Authority	87344
Evaluation Visit	87345

Article 5. Enforcement Provisions

Serious Deficiencies - Examples	87451
Deficiencies in Compliance	87452
Follow-Up Visits to Determine Compliance	87453
Penalties	87454
Administrative Review - General	87455
Unlicensed Facility Penalties	87457
Unlicensed Facility Administrative Appeal	87458

Article 6. Continuing Requirements

Governing Body	87560
Reports	87561
Finances	87562
Provision for Administrator	87563
Administrator - Qualifications and Duties	87564
Personnel Requirements - General	87565
Personnel Records	87566
General	87567
Admission Agreements	87568
Medical Assessment	87569
Resident Records	87570
Register of Residents	87571
Personal Rights	87572
Telephones	87573

TABLE OF CONTENTS (Continued)

Article 6. Continuing Requirements (Continued)

	Section
Motor Vehicles Used in Transporting Residents	87574
Incidental Medical and Dental Care	87575
Request to Forego Resuscitative Measures, Advance Directives and Do-Not-Resuscitate Orders	87575.1
Food Services	87576
Personal Accommodations and Services	87577
Personal Assistance and Care	87578
Planned Activities	87579
Personnel - Operations	87580
Night Supervision	87581
Acceptance and Retention Limitations	87582
Pre-Admission Appraisal - General	87583
Functional Capabilities	87584
Mental Condition	87585
Social Factors	87586
Reappraisals	87587
Documentation and Support	87588
Eviction Procedures	87589
Basic Services	87590
Observation of the Resident	87591
Resident Councils	87592

Article 7. Physical Environment

Alterations to Existing Buildings or New Facilities	87686
Fire Safety	87689
Resident and Support Services	87690
Maintenance and Operation	87691
Storage Space	87692

TABLE OF CONTENTS (Continued)

Article 8. Incidental Medical Services

	Section
Health and Safety Protection	87700
Prohibited Health Conditions	87701
Health Condition Relocation Order	87701.1
Resident Request for Review of Health Condition Relocation Order	87701.5
Allowable Health Conditions	87702
General Requirements for Allowable Health Conditions	87702.1
Oxygen Administration	87703
Intermittent Positive Pressure Breathing Machine (IPPB)	87704
Colostomy/Ileostomy	87705
Enema and/or Suppository and Fecal Impaction Removal	87706
Indwelling Urinary Catheter/Catheter Procedure	87707
Managed Bowel and Bladder Incontinence	87708
Contractures	87709
Diabetes	87710
Injections	87711
Renumbered to Section 87724 by Manual Letter No. CCL-95-12, effective 11/16/95	87712
Healing Wounds	87713
Repealed by Manual Letter No. CCL-92-10, effective 7/21/92	87714
Repealed by Manual Letter No. CCL-97-14, effective 6/15/97	87715
Hospice Care for Terminally Ill Residents	87716
Administrative Review - Incidental Medical Services	87720
Incidental Medical Related Services Exceptions	87721
Department Review	87722
Care of Persons with Dementia	87724

Article 9. Licensee and Administrator Certification

Certification Program	87730
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This Users' Manual is issued as an operational tool.

This Manual contains:

- a) Regulations adopted by the Department of Social Services (DSS) for the governance of its agents, licensees, and/or beneficiaries.
- b) Regulations adopted by other State Departments affecting DSS programs.
- c) Statutes from appropriate Codes which govern DSS programs.
- d) Court decisions; and
- e) Operational standards by which DSS staff will evaluate performance within DSS programs.

Regulations of DSS are printed in gothic type as is this sentence.

Handbook material, which includes reprinted statutory material, other department's regulations and examples, is separated from the regulations by double lines and the phrases "**HANDBOOK BEGINS HERE**", "**HANDBOOK CONTINUES**", and "**HANDBOOK ENDS HERE**" in bold print. Please note that both other departments' regulations and statutes are mandatory, not optional.

In addition, please note that as a result of the change to a new computer system revised language in this manual letter and subsequent community care licensing changes will now be identified by **graphic screen**.

Questions relative to this Users' Manual should be directed to your usual program policy office.

Article 1. Definitions**87100 GENERAL****87100**

The provisions of Chapter 1, Division 6, shall not apply to the provisions of Chapter 8, Residential Care Facilities for the Elderly.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Section 1569.2, Health and Safety Code.

87101 DEFINITIONS**87101**

For purposes of this chapter the following definitions shall apply:

- a. (1) Administrator. "Administrator" means the individual designated by the licensee to act in behalf of the licensee in the overall management of the facility. The licensee, if an individual, and the administrator may be one and the same person.
- (2) Adult. "Adult" means a person who is eighteen (18) years of age or older.
- (3) Advance Directive. "Advance Directive" means a written instruction that relates to the provision of health care when the individual is incapacitated. Advance directives include, but are not limited to, a Durable Power of Attorney for Health Care and a Declaration pursuant to the Natural Death Act (Health and Safety Code Section 7185 et seq.). In an advance directive, a person states choices for medical treatment and/or designates who should make treatment choices if the person creating the advance directive should lose decision-making capacity.
- (4) Ambulatory Person. "Ambulatory Person" means a person who is capable of demonstrating the mental competence and physical ability to leave a building without assistance of any other person or without the use of any mechanical aid in case of an emergency.
- (5) Applicant. "Applicant" means any individual, firm, partnership, association, corporation or county who has made application for a license.
- (6) Appropriately Skilled Professional: Means an individual that has training and is licensed to perform the necessary medical procedures prescribed by a physician. This includes but is not limited to the following: Registered Nurse (RN), Licensed Vocational Nurse (LVN), Physical Therapist (PT), Occupational Therapist (OT) and Respiratory Therapist (RT). These professionals may include, but are not limited to, those persons employed by a home health agency, the resident, or facilities and who are currently licensed in California.
- b. (1) Basic Rate. "Basic Rate" means the SSI/SSP established rate, which does not include that amount allocated for the recipient's personal and incidental needs.

87101 DEFINITIONS (Continued)**87101**

- (2) Basic Services. "Basic Services" means those services required to be provided by the facility in order to obtain and maintain a license and include, in such combinations as may meet the needs of the residents and be applicable to the type of facility to be operated, the following: safe and healthful living accommodations; personal assistance and care; observation and supervision; planned activities; food service; and arrangements for obtaining incidental medical and dental care.
- c. (1) Capacity. "Capacity" means that maximum number of persons authorized to be provided services at any one time in any licensed facility.
- (2) Care and Supervision. "Care and Supervision" means those activities which if provided shall require the facility to be licensed. It involves assistance as needed with activities of daily living and the assumption of varying degrees of responsibility for the safety and well-being of residents. "Care and Supervision" shall include, but not be limited to, any one or more of the following activities provided by a person or facility to meet the needs of the residents:
- (A) Assistance in dressing, grooming, bathing and other personal hygiene;
 - (B) Assistance with taking medication; as specified in Section 87575;
 - (C) Central storing and distribution of medications, as specified in Section 87575;
 - (D) Arrangement of and assistance with medical and dental care. This may include transportation, as specified in Section 87575;
 - (E) Maintenance of house rules for the protection of residents;
 - (F) Supervision of resident schedules and activities;
 - (G) Maintenance and supervision of resident monies or property;
 - (H) Monitoring food intake or special diets.
- (3) Community Care Facility. "Community Care Facility" means any facility, place or building providing nonmedical care and supervision, as defined in Section 87101c.(2).
- (4) Conservator. "Conservator" means a person appointed by the Superior Court pursuant to the provisions of Section 1800 et seq. of the Probate Code to care for the person, or person and estate, of another.

87101 DEFINITIONS (Continued)**87101**

- (5) Consultant. "Consultant" means a person professionally qualified by training and experience to provide expert information on a particular subject.
- (6) Control of Property. "Control of Property" means the right to enter, occupy, and maintain the operation of the facility property within regulatory requirements. Evidence of control of property shall include, but is not limited to, the following:
 - (A) A Grant Deed showing ownership; or
 - (B) The Lease Agreement or Rental Agreement; or
 - (C) A court order or similar document which shows the authority to control the property pending outcome of probate proceeding or estate settlement.
- d. (1) Deficiency. "Deficiency" means any failure to comply with any provision of the Residential Care Facilities Act for the Elderly and regulations adopted by the Department pursuant to the Act.
- (2) Delayed Egress Device. "Delayed Egress Device" means a special egress-control device of the time delay type as specified in Health and Safety Code Section 1569.699(a).

HANDBOOK BEGINS HERE

- (A) Health and Safety Code Section 1569.699(a) reads:

When approved by the person responsible for enforcement as described in Section 13146, exit doors in facilities classified as Group R, Division 2 facilities under the California Building Standards Code, licensed as residential care facilities for the elderly, and housing clients with Alzheimer's disease or dementia, may be equipped with approved listed special egress-control devices of the time-delay type, provided the building is protected throughout by an approved automatic sprinkler system and an approved automatic smoke-detection system. The devices shall conform to all of the following requirements:

HANDBOOK CONTINUES

87101 DEFINITIONS (Continued)

87101

HANDBOOK CONTINUES

- (1) Automatic deactivation of the egress-control device upon activation of either the sprinkler system or the detection system.
- (2) Automatic deactivation of the egress-control device upon loss of electrical power to any one of the following: The egress-control device; the smoke-detection system; exit illumination as required by Section 1012 of the California Building Code.
- (3) Be capable of being deactivated by a signal from a switch located in an approved location.
- (4) Initiate an irreversible process that will deactivate the egress-control device whenever a manual force of not more than 15 pounds (66.72N) is applied for two seconds to the panic bar or other door-latching hardware. The egress-control device shall deactivate within an approved time period not to exceed a total of 15 seconds, except that the person responsible for enforcement as described in Section 13146 may approve a delay not to exceed 30 seconds in residential care facilities for the elderly serving patients with Alzheimer's disease. The time delay established for each egress-control device shall not be field adjustable.
- (5) Actuation of the panic bar or other door-latching hardware shall activate an audible signal at the door.
- (6) The unlatching shall not require more than one operation.
- (7) A sign shall be provided on the door located above and within 12 inches (305mm) of the panic bar or other door-latching hardware reading:

KEEP PUSHING, THIS DOOR WILL OPEN IN ____ SECONDS, ALARM
WILL SOUND.

HANDBOOK CONTINUES

87101 DEFINITIONS (Continued)

87101

HANDBOOK CONTINUES

Sign letters shall be at least one inch (25mm) in height and shall have a stroke of not less than 1/8 inch (3.3mm).

- (8) Regardless of the means of deactivation, relocking of the egress-control device shall be by manual means only at the door.

HANDBOOK ENDS HERE

- (3) Department. "Department" is defined in Health and Safety Code, Section 1569.2(b).

HANDBOOK BEGINS HERE

"Department" means the State Department of Social Services.

HANDBOOK ENDS HERE

- (4) Dietitian. "Dietitian" means a person who is eligible for registration by the American Dietetic Association.
- (5) Director. "Director" is defined in Health and Safety Code, Section 1569.2(c).

HANDBOOK BEGINS HERE

"Director" means the Director of the State Department of Social Services.

HANDBOOK ENDS HERE

- (6) Do-Not-Resuscitate (DNR) Order. "Do-Not-Resuscitate Order" means the order of the resident's physician to alert appropriately skilled professionals and prehospital emergency medical services personnel to the resident's wish to forego resuscitative measures in the event of the resident's cardiac or respiratory arrest.
- (7) Documentation. "Documentation" means written supportive information including but not limited to the Licensing Report (Form LIC 809).

87101 DEFINITIONS (Continued)**87101**

- e. (1) Egress Alert Device. "Egress Alert Device" means a wrist band or other device which may be worn by a resident or carried on a resident's person, which triggers a visual or auditory alarm when the resident leaves the facility building or grounds.
- (2) Elderly Person. "Elderly Person" means, for purposes of admission into a residential care facility for the elderly, a person who is sixty-two (62) years of age or older.
- (3) Emergency Approval to Operate. "Emergency Approval to Operate" (EAO) means a temporary approval to operate a facility for no more than 60 days pending the issuance or denial of a license by the licensing agency.
- (4) Evaluator. "Evaluator" means any person who is a duly authorized officer, employee or agent of the Department including any officer, employee or agent of a county or other public agency authorized by contract to license community care facilities.
- (5) Evidence of Licensee's Death. "Evidence of Licensee's Death" shall include, but is not limited to, a copy of the death certificate, obituary notice, certification of death from the decedent's mortuary, or a letter from the attending physician or coroner's office verifying the death of the licensee.
- (6) Exception. "Exception" means a variance to a specific regulation based on the unique needs or circumstances of a specific resident or staff person. Requests for exceptions are made to the licensing agency by an applicant or licensee. They may be granted for a particular facility, resident or staff person, but cannot be transferred or applied to other individuals.
- (7) Existing Facility. "Existing Facility" means any facility operating under a valid unexpired license on the date of application for a new or renewal license.
- f. (1) Facility Hospice Care Waiver. "Facility Hospice Care Waiver" means a waiver from the limitation on retention of residents who require more care and supervision than other residents and residents who are bedridden other than for a temporary illness. The Hospice Care Waiver granted by the Department will permit the retention in a facility of a designated maximum number of terminally ill residents who are receiving hospice services from a hospice agency. The Facility Hospice Care Waiver will apply only to those residents who are receiving hospice care in compliance with a hospice care plan meeting the requirements of Section 87716.
- g. (1) Guardian. "Guardian" means a person appointed by the Superior Court pursuant to the provisions of Section 1500 et seq. of the Probate Code to care for the person, or person and estate, of another.
- h. (1) Healing wounds include cuts, stage one and two dermal ulcers as diagnosed by a physician, and incisions that are being treated by an appropriate skilled professional with the affected area returning to its normal state. They may involve breaking or laceration of the skin and usually damage to the underlying tissues.

87101 DEFINITIONS (Continued)

87101

- (2) Health Care Provider. "Health Care Provider" means those persons described in Probate Code Section 4615: "a person who is licensed, certified, or otherwise authorized or permitted by the law of this state to administer health care in the ordinary course of business or practice of a profession."
 - (3) Health Care Surrogate Decision Maker. "Health Care Surrogate Decision Maker" means an individual who participates in health care decision making on behalf of an incapacitated resident. Health care surrogate decision maker may be formally appointed (e.g., by the resident in a Durable Power of Attorney for Health Care or by a court in a conservatorship proceeding) or, in the absence of a formal appointment, may be recognized by virtue of a relationship with the resident (e.g., the resident's next of kin). The licensee or any staff member of the facility shall not be appointed health care surrogate decision maker.
 - (4) Health Condition Relocation Order. "Health Condition Relocation Order" means written notice by the Department to a licensee requiring the relocation of a resident from a residential care facility for the elderly because the resident has a health condition which cannot be cared for within the limits of the license, requires inpatient care in a health facility or has a prohibited health condition as specified in Section 87701.
 - (5) Home Economist. "Home Economist" means a person who holds a baccalaureate or higher degree in home economics and who specialized in either food and nutrition or dietetics.
 - (6) Hospice or Hospice Agency. "Hospice or Hospice Agency" means an entity which provides hospice services to terminally ill persons, is Medicare certified for hospice, and holds either a Hospice license or a Home Health Agency license from the California Department of Health Services. Any organizations, appropriately skilled professionals, or other professional persons or entities that are subcontracted by the hospice or hospice agency for the provision of specified hospice services to the resident are included within the definition. The hospice agency providing services in an RCFE shall not subcontract with the licensee or any facility staff for the provision of services.
 - (7) Hospice Care Plan. "Hospice Care Plan" means the hospice agency's written plan of care for a terminally ill resident. The hospice shall retain overall responsibility for the development and maintenance of the plan and quality of hospice services delivered.
- i. (1) Immediate Need. "Immediate Need" means a situation where prohibiting the operation of the facility would be detrimental to a resident's physical health, mental health, safety, or welfare. Examples of immediate need include but are not limited to:

87101 DEFINITIONS (Continued)**87101**

- (A) A change in facility location when residents are in need of services from the same operator at the new location;
- (B) A change of facility ownership when residents are in need of services from the new operator.
- (2) Instruction: Means to furnish an individual with knowledge or to teach, give orders, or direction of a process or procedure.
- (3) Interdisciplinary Team. "Interdisciplinary Team" means a team that shall assist the Department in evaluating the need for relocating a resident of a residential care facility for the elderly when the resident has requested a review of the Department's health-condition relocation order. This team shall consist of the Department's nurse consultant and a social worker, designated by the Department, with experience in the needs of the elderly. Persons selected for an interdisciplinary team review shall not have been involved in the initial decision to issue a relocation order for the resident in question.
- j. (Reserved)
- k. (Reserved)
- l. (1) License. "License" is defined in Health and Safety Code Section 1569.2(g).

87101 DEFINITIONS (Continued)

87101

HANDBOOK BEGINS HERE

(A) Health and Safety Code Section 1569.2(g) reads:

"License" means a basic permit to operate a residential care facility for the elderly.

HANDBOOK ENDS HERE

- (2) Licensee. "Licensee" means the individual, firm, partnership, corporation, association or county having the authority and responsibility for the operation of a licensed facility.
- (3) Licensing Agency. "Licensing Agency" means a state, county or other public agency authorized by the Department to assume specified licensing, approval or consultation responsibilities pursuant to Section 1569.13 of the Health and Safety Code.
- (4) Life Care Contract. "Life Care Contract" is defined in Health and Safety Code, Section 1771(m).

HANDBOOK BEGINS HERE

"Life Care Contract" means a contract to provide to a person for the duration of his life, or for a term in excess of one year, nursing services, medical services, or health related services, board and lodging and care as necessary, or any combination of such services, for the person, in a facility. The service may be conditioned upon the transfer of an entrance fee to the provider of the services, in addition to or in lieu of the payment of regular periodic charges for the care and services involved.

HANDBOOK ENDS HERE

m. (Reserved)

- n. (1) New Facility. "New Facility" means any facility applying for an initial license whether newly constructed or previously existing for some other purpose.

87101 DEFINITIONS (Continued)**87101**

- (2) Nonambulatory Person. "Nonambulatory Person" means a person who is unable to leave a building unassisted under emergency conditions. It includes, but is not limited to, those persons who depend upon mechanical aids such as crutches, walkers, and wheelchairs. It also includes persons who are unable, or likely to be unable, to respond physically or mentally to an oral instruction relating to fire danger and, unassisted, take appropriate action relating to such danger.
- (3) Nutritionist. "Nutritionist" means a person holding a master's degree in food and nutrition, dietetics, or public health nutrition, or who is employed by a county health department in the latter capacity.
- o. (Reserved)
- p. (1) Physician. "Physician" means a person licensed as a physician and surgeon by the California Board of Medical Examiners or by the California Board of Osteopathic Examiners.
- (2) Placement Agency. "Placement Agency" as defined in Health and Safety Code Section 1569.47(a), means any county welfare department, county social services department, county mental health department, county public guardian, general acute care hospital discharge planner or coordinator, state-funded program or private agency providing placement or referral services, and regional center for persons with developmental disabilities which is engaged in finding homes or other places for the placement of elderly persons for temporary or permanent care.
- (3) "PRN Medication" (pro re nata) means any nonprescription or prescription medication which is to be taken as needed.
- (4) Provision or Provide. Whenever any regulation specifies that provision be made for or that there be provided any service, personnel or other requirement, it means that if the resident is not capable of doing so himself, the licensee shall do so directly or present evidence satisfactory to the licensing agency of the particular arrangement by which another provider in the community will do so.
- (5) Provisional License. "Provisional License" means a temporary, nonrenewable license, issued for a period not to exceed twelve months which is issued in accordance with the criteria specified in Section 87231.
- q. (Reserved)
- r. (1) Relative. "Relative" means spouse, parent, stepparent, son, daughter, brother, sister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin or any such person denoted by the prefix "grand" or "great", or the spouse of any of the persons specified in this definition, even if the marriage has been terminated by death or dissolution.

87101 DEFINITIONS (Continued)

87101

- (2) Request to Forego Resuscitative Measures. A "Request to Forego Resuscitative Measures" is defined in Probate Code Section 4753(b).

HANDBOOK BEGINS HERE

- (A) Probate Code Section 4753(b) reads:

A "request to forego resuscitative measures" shall be a written document, signed by the individual, or a legally recognized surrogate health care decisionmaker and a physician and surgeon, that directs a health care provider to forego resuscitative measures. For the purpose of this section, a "request to forego resuscitative measures" shall include a prehospital "do not resuscitate" form as developed by the Emergency Medical Services Authority or other substantially similar form. A request to forego resuscitative measures may also be evidenced by a medallion engraved with the words "do not resuscitate" or the letters "DNR", a patient identification number, and a 24-hour toll-free telephone number, issued by a person pursuant to an agreement with the Emergency Medical Services Authority.

HANDBOOK ENDS HERE

- (3) Residential Care Facility for the Elderly. "Residential Care Facility for the Elderly" means a housing arrangement chosen voluntarily by the resident, the resident's guardian, conservator or other responsible person; where 75 percent of the residents are sixty years of age or older and where varying levels of care and supervision are provided, as agreed to at time of admission or as determined necessary at subsequent times of reappraisal. Any younger residents must have needs compatible with other residents.
- (4) Responsible Person. "Responsible Person" means that individual or individuals, including a relative, health care surrogate decision maker, or placement agency, who assist the resident in placement or assume varying degrees of responsibility for the resident's well-being.
- (5) Room and Board. "Room and Board" means a living arrangement where care and supervision is neither provided nor available.
- s. (1) Serious Deficiency. "Serious Deficiency" means any deficiency that presents an immediate or substantial threat to the physical health, mental health, or safety of the residents or clients of a community care facility.
- (2) Shall. "Shall" means mandatory. "May" means permissive.
- (3) Singular-Plural. Whenever in these regulations the singular is used, it can include the plural.
- (4) Social Worker. "Social Worker" means a person who has a graduate degree from an accredited school of social work or who has equivalent qualifications as determined by the Department.

87101 DEFINITIONS (Continued)**87101**

- (5) SSI/SSP. "SSI/SSP" means the Supplemental Security Income/State Supplemental Program.
- (6) Substantial Compliance. "Substantial Compliance" means the absence of any deficiencies which would threaten the physical health, mental health, safety or welfare of the residents. Such deficiencies include, but are not limited to, those deficiencies referred to in Section 87451 and the presence of any uncorrected serious deficiencies for which civil penalties could be assessed.
- (7) Supervision: Means to oversee or direct the work of an individual or subordinate but does not necessarily require the immediate presence of the supervisor.
- t. (1) Terminally Ill Resident. "Terminally Ill Resident" means that the resident has a prognosis by his/her attending physician that the resident's life expectancy is six months or less if his/her illness or condition runs its normal course.
- (2) Transfer trauma. "Transfer trauma" means the consequences of the stress and emotional shock caused by an abrupt, involuntary relocation of a resident from one facility to another.
- u. (1) "Unlicensed Residential Facility for the Elderly" means a facility as defined in Health and Safety Code Section 1569.44.

HANDBOOK BEGINS HERE

- (A) Health and Safety Code Section 1569.44 provides in part:

A facility shall be deemed to be an "unlicensed residential care facility for the elderly" and "maintained and operated to provide residential care" if it is unlicensed and not exempt from licensure, and any one of the following conditions is satisfied:

- (1) The facility is providing care and supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.
- (2) The facility is held out as, or represented as, providing care and supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.
- (3) The facility accepts or retains residents who demonstrate the need for care and supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.
- (4) The facility represents itself as a licensed residential facility for the elderly.

HANDBOOK ENDS HERE

87101 DEFINITIONS (Continued)**87101**

- (B) A facility which is "providing care and supervision" as defined in Section 87101c.(2) includes, but is not limited to, one in which individual has been placed by a placement agency or family members.
- (C) A facility which is "held out as or represented as providing care and supervision" includes, but is not limited to:
 - (1) A facility whose license has been revoked or denied, but the individual continues to provide care for the same or different clients with similar needs.
 - (2) A facility where change of ownership has occurred and the same clients are retained.
 - (3) A licensed facility that moves to a new location.
 - (4) A facility which advertises as providing care and supervision.
- (D) A facility which "accepts or retains residents who demonstrate the need for care and supervision" includes, but is not limited to:
 - (1) A facility with residents requiring care and supervision, even though the facility is providing board and room only, or board only, or room only.
 - (2) A facility where it is apparent that care and supervision are being provided by virtue of the client's needs being met.
- v. (1) Voluntary. "Voluntary" means resulting from free will.
- w. (1) Waiver. "Waiver" means a variance to a specific regulation based on a facility-wide need or circumstance which is not typically tied to a specific resident or staff person. Requests for waivers are made to the licensing agency, in advance, by an applicant or licensee.

87101 DEFINITIONS (Continued)**87101**

x. (Reserved)

y. (Reserved)

z. (Reserved)

NOTE: Authority cited: Sections 1569.30 and 1569.698(c), Health and Safety Code. Reference: 42 CFR 418.3; Sections 1569.1, 1569.2, 1569.5, 1569.10, 1569.145, 1569.15, 1569.153, 1569.157, 1569.158, 1569.17, 1569.19, 1569.191(e), 1569.193(a) and (c), 1569.20, 1569.21, 1569.30, 1569.31, 1569.312, 1569.38, 1569.44, 1569.47, 1569.54, 1569.699(a), 1569.73, 1569.74, 1569.82, and 7185 et seq., Health and Safety Code; and Sections 4615 and 4753, Probate Code.

Article 2. License**87105 LICENSE REQUIRED****87105**

- (a) Pursuant to Health and Safety Code, Section 1569.10, any individual or legal entity providing or intending to provide care and supervision to the elderly in a residential facility shall obtain a current valid license pursuant to the provisions of this chapter. This shall not require an adult residential facility to relocate a resident who becomes 60, nor to change licensing category, provided that the resident's needs remain compatible with those of other residents, and the licensing agency has approved an exception request.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.10, 1569.44 and 1569.45, Health and Safety Code.

87106 OPERATION WITHOUT A LICENSE**87106**

- (a) An unlicensed facility as defined in Section 87101u.(1) is in violation of Section 1569.10, 1569.44, and/or 1569.45 of the Health and Safety Code unless the facility is exempted from licensure under Section 87107(a).
- (b) If the facility is alleged to be in violation of Section 1569.10 and/or 1569.44 and/or 1569.45 of the Health and Safety Code, the licensing agency shall conduct a site visit and/or evaluation of the facility pursuant to Health and Safety Code Section 1569.35.

HANDBOOK BEGINS HERE

- (1) Health and Safety Code Section 1569.35(c) provides in part:

Upon receipt of a complaint, other than a complaint alleging denial of a statutory right of access to a residential care facility for the elderly, the department shall make a preliminary review and, unless the department determines that the complaint is willfully intended to harass a licensee or is without any reasonable basis, it shall make an onsite inspection within 10 days after receiving the complaint. In either event, the complainant shall be promptly informed of the department's proposed course of action.

HANDBOOK ENDS HERE

87106 OPERATION WITHOUT A LICENSE (Continued)**87106**

- (c) If the facility is operating without a license, the licensing agency shall issue a Notice of Operation in Violation of Law, and shall refer the case for criminal prosecution and/or civil proceedings.
- (d) The licensing agency shall issue an immediate civil penalty pursuant to Sections 87310 and 1569.485 of the Health and Safety Code.

HANDBOOK BEGINS HERE

- (1) Section 1569.485 of the Health and Safety Code provides in part:

Notwithstanding any other provision of this chapter, any person who violates Section 1569.10 or 1569.44, or both, may be assessed by the department an immediate civil penalty in the amount of two hundred dollars (\$200) per day of violation.

The civil penalty shall be imposed if an unlicensed facility is operated and the operator refuses to seek licensure or the licensure application is denied and the operator continues to operate the unlicensed facility.

HANDBOOK ENDS HERE

- (e) Sections 87106(c) and (d) shall be applied in any combination deemed appropriate by the licensing agency.
- (f) The licensing agency shall notify the appropriate local or state Ombudsman, placement, or adult protective service agency if either of the following conditions exist:
 - (1) There is an immediate threat to the residents' health and safety.
 - (2) The facility does not submit an application for licensure within 15 calendar days of being served a Notice of Operation in Violation of Law.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.10, 1569.19, 1569.335, 1569.35, 1569.40, 1569.405, 1569.41, 1569.42, 1569.43, 1569.44, 1569.45, 1569.47, 1569.485 and 1569.495, Health and Safety Code.

87107 EXEMPTION FROM LICENSURE**87107**

- (a) The following shall be allowed to operate without being licensed as a residential care facility for the elderly:
- (1) Any health facility, as defined by Health and Safety Code Section 1250.
 - (2) Any clinic, as defined by Health and Safety Code Section 1202.
 - (3) Any facility conducted by and for the adherents of any well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend on prayer or spiritual means for healing in the practice of the religion of such church or denomination. Such facilities shall be limited to those facilities or portions thereof which substitute prayer for medical/nursing services which would otherwise be provided for or required by residents in a health facility, as defined by Section 1200 or 1250 of the Health and Safety Code.
 - (4) Any house, institution, hotel or other similar place that supplies board and room only, or room only, or board only, if no element of care and/or supervision, as defined by this chapter, is provided, made available, or contractually promised, such as in a life care agreement or program agreement with a facility. However, this shall not preclude care and/or supervision provided for brief and irregular periods of time for reasons such as temporary illnesses or emergencies provided that such is determined to be minor and temporary and does not require twenty-four (24) hours supervision of the resident(s).
 - (5) Recovery houses or other similar facilities providing group living arrangements for persons recovering from alcoholism or drug addiction where the facility provides no care and supervision.

87107 EXEMPTION FROM LICENSURE (Continued)**87107**

- (6) Any alcoholism recovery facility as defined by Section 11834.11 of the Health and Safety Code relating to alcohol programs.

HANDBOOK BEGINS HERE

Health and Safety Code Section 11834.11 provides in part:

- (A) An "alcoholism recovery facility" means any facility place or building which is maintained and operated to provide 24-hour residential nonmedical alcoholism recovery services exclusively for individuals whose involvement in services is related primarily to an alcohol problem.

HANDBOOK ENDS HERE

- (7) Any care and supervision of persons by a relative.
- (8) Any care and supervision of persons from only one family by a close friend, if such arrangement is not for financial profit and occurs only occasionally and irregularly. For the purposes of this exemption the term "occasionally and irregularly" means not to exceed ten (10) hours per week; however, this shall not preclude care provided for brief periods of time for reasons such as family emergencies, vacations, military leave, and similar situations.
- (9) Any similar facility as determined by the Director.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1505, 1569.145, 1569.145(i), and 11834.11, Health and Safety Code.

87108 INTEGRAL FACILITIES**87108**

- (a) Upon written application, the licensing agency may issue a single license to integral facilities conducting multiple, related programs which would otherwise require separate licenses provided all of the following requirements are met:
- (1) Separate buildings or portions of the facility shall be integral components of a single program.
 - (2) All components of the program shall be managed by the same licensee.
 - (3) All components of the program shall be conducted at a single site.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Section 1569.30, Health and Safety Code.

87110 LIMITATIONS -- CAPACITY AND AMBULATORY STATUS**87110**

- (a) A licensee shall not operate a facility beyond the conditions and limitations specified on the license, including specification of the maximum number of persons who may receive services at any one time. An exception may be made in the case of catastrophic emergency when the licensing agency may make temporary exceptions to the approved capacity.
- (b) Resident rooms approved for 24-hour care of ambulatory residents only shall not accommodate nonambulatory residents. Residents whose condition becomes nonambulatory shall not remain in rooms restricted to ambulatory residents.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.2, 1569.31 and 1569.312, Health and Safety Code.

87111 ADVERTISEMENTS AND LICENSE NUMBER**87111**

- (a) Licensees shall reveal each facility license number in all advertisements or correspondence in accordance with Health and Safety Code Sections 1569.681 and 1569.68.

87111 ADVERTISEMENTS AND LICENSE NUMBER (Continued)**87111**

HANDBOOK BEGINS HERE

- (1) Health and Safety Code, Section 1569.681 provides:
- (a) Each residential care facility for the elderly licensed under this chapter shall reveal its license number in all advertisements, publications, or announcements made with the intent to attract clients or residents.
 - (b) Advertisements, publications, or announcements subject to the requirements of subdivision (a) referred to herein include, but are not limited to, those contained in the following:
 - (1) Newspaper or magazine.
 - (2) Consumer report.
 - (3) Announcement of intent to commence business.
 - (4) Telephone directory yellow pages.
 - (5) Professional or service directory.
 - (6) Radio or television commercial.
- (2) Health and Safety Code, Section 1569.68 provides:

All residential care facilities shall be required to include their current license number in any public advertisement or correspondence.

HANDBOOK ENDS HERE

- (b) Licensees who operate more than one facility and use a common advertisement for these facilities shall be required to list each facility license number in accordance with Health and Safety Code Sections 1569.681 and 1569.68.

NOTE: Authority cited: Section 1569.30(a), Health and Safety Code. Reference: Sections 1569.681 and 1569.68, Health and Safety Code.

87112 FALSE CLAIMS**87112**

No licensee, officer or employee of a licensee shall make or disseminate any false or misleading statement regarding the facility or any of the services provided by the facility.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.30 and 1569.44, Health and Safety Code.

87113 TRANSFERABILITY**87113**

- (a) The license shall not be transferable.
- (b) The licensee shall notify the licensing agency and all residents receiving services, or their responsible persons, in writing as soon as possible and in all cases at least sixty (60) days prior to the effective date that any change in ownership of the facility occurs as required by Health and Safety Code Section 1569.191(a)(1).
- (c) In all other instances, including a change in licensee, type of license, or location of the facility, the licensee shall notify the licensing agency and all residents receiving services, or their responsible persons, in writing as soon as possible and in all cases at least thirty (30) days prior to the effective date of that change.
- (d) In the case of change of ownership or licensee a new application for license shall be submitted by the prospective new licensee.

NOTE: Authority cited: Sections 1569.30 and 1569.30(a), Health and Safety Code. Reference: Sections 1569.11 and 1569.191, Health and Safety Code.

87114 CONTINUATION OF LICENSE UNDER EMERGENCY CONDITIONS**87114**

- (a) The licensing agency may consent to a change of location and continuation of the existing license of any facility for a reasonable period of time when the change is requested because of the accidental destruction of the licensed premises or similar emergency conditions, so long as the new location or place of performance conforms to building, fire and life safety standards.
- (b) In the event of a licensee's death, the licensing agency shall be permitted to consent to an adult relative operating a previously licensed facility providing the requirements of Section 1569.193 of the Health and Safety Code are met.

**87114 CONTINUATION OF LICENSE UNDER EMERGENCY
CONDITIONS (Continued)****87114**

HANDBOOK BEGINS HERE

- (1) Health and Safety Code, Section 1569.193 provides:
- (a) When a licensee dies, an adult relative who has control of the property may continue operation of the facility if the following conditions are met:
- (1) The department receives notification of the death during the next normal workday and is informed of the relative's intent to continue operating the facility as a residential care facility for the elderly.
- (2) The relative files an application within five days of the date of death, shows evidence satisfactory to the department that he or she has the ability to operate the facility, submits his or her fingerprint card, and provides evidence of the licensee's death.
- (b) The department shall make a decision within 60 days after the application is submitted on whether to issue a provisional license pursuant to Section 1569.21. A provisional license shall be granted only if the department is satisfied that the conditions specified in subdivision (a) have been met and that the health and safety of the residents of the facility will not be jeopardized.
- (c) If the relative complies with this section, he or she shall not be considered to be operating an unlicensed facility while the department decides whether to grant the provisional license.

HANDBOOK ENDS HERE

- (2) For purposes of Section 87114(b), the adult relative shall have control of property, as defined in Section 87101c.(6), prior to the continued operation of the facility.
- (3) For purposes of Section 87114(b), submission of application within five (5) days of the date of death shall mean within five calendar days of licensee's death.

**87114 CONTINUATION OF LICENSE UNDER EMERGENCY
CONDITIONS (Continued)****87114**

- (4) For purposes of Section 87114(b), the adult relative shall provide to the licensing agency evidence of the licensee's death as defined in Section 87101e.(4).
- (5) If the adult relative complies with Section 87114(b), he/she shall be issued an Emergency Approval to Operate (EAO) as defined in Section 87101e.(2).
 - (A) The applicant (adult relative) who is issued an EAO shall perform all the duties, functions, and responsibilities required of a licensee.
 - (B) Failure to comply with licensing laws and regulations under Section 87114(b) as determined by the licensing agency, shall result in the denial of the application for license. This denial shall also constitute termination of the EAO.
 - (C) The licensing agency shall provide written notification of the denial and this notice shall be effective immediately upon receipt.
- (c) In the event of the sale and transfer of property and business, the applicant (buyer) shall be issued an EAO if the applicant (buyer) complies with Section 1569.191 of the Health and Safety Code.

HANDBOOK BEGINS HERE

- (1) Health and Safety Code, Section 1569.191 provides:
 - (a) Notwithstanding Section 1569.19, in the event of a sale of a licensed facility where the sale will result in a new license being issued, the sale and transfer of property and business shall be subject to both of the following:
 - (1) The licensee shall provide written notice to the department and to each resident or his or her legal representative of the licensee's intent to sell the facility at least 60 days prior to the transfer of property or business, or at the time that a bona-fide offer is made, whichever period is longer.

HANDBOOK CONTINUES

**87114 CONTINUATION OF LICENSE UNDER EMERGENCY
CONDITIONS (Continued)****87114**

HANDBOOK CONTINUES

- (2) The licensee shall, prior to entering into an admission agreement, inform all residents, or their legal representatives, admitted to the facility after notification to the department, of the licensee's intent to sell the property or business.
- (b) Except as provided in subdivision (e), the property and business shall not be transferred until the buyer qualifies for a license or provisional license within the appropriate provisions of this chapter.
- (1) For purposes of this section, it shall be the seller's responsibility to inform a prospective buyer of the necessity to obtain a license, as required by this chapter, if the buyer's intent is to continue operating the facility as a residential care facility for the elderly.
- (2) For purposes of this section, it shall be the buyer's responsibility to apply for a license, as specified in Section 1569.15, within five days of the acceptance of the offer by the seller.
- (c) No sale of the facility shall be permitted until 60 days have elapsed from the date upon which notice has been provided pursuant to paragraphs (1) and (2) of subdivision (a).
- (d) The department shall give priority to applications for licensure which are submitted pursuant to this section in order to ensure timely transfer of the property and business. The department shall make a decision within 60 days after the application is submitted on whether to issue a license pursuant to Section 1569.15.
- (e) If the parties involved in the transfer of the property and business fully comply with this section then the transfer may be completed and the buyer shall not be considered to be operating an unlicensed facility while the department makes final determination on the application for licensure.

HANDBOOK ENDS HERE

**87114 CONTINUATION OF LICENSE UNDER EMERGENCY
CONDITIONS (Continued)****87114**

- (2) The applicant (buyer) who is issued an EAO shall perform all the duties, functions and responsibilities required of a licensee.
- (3) Failure to comply with licensing laws and regulations under this section as determined by the licensing agency, shall result in the denial of the application for license. This denial shall also constitute termination of the EAO.
- (4) The licensing agency shall provide written notification of the denial and this notice shall be effective immediately upon receipt.
- (d) "A bona-fide offer", as specified in Health and Safety Code Section 1569.191(a)(1), shall mean a proposal by the buyer to purchase the facility with definite terms in writing communicated to the seller and accompanied by a cash deposit.

NOTE: Authority cited: Sections 1569.30 and 1569.30(a), Health and Safety Code. Reference: Sections 1569.1, 1569.191, 1569.193, and 1569.30, Health and Safety Code.

87115 POSTING OF LICENSE**87115**

The license shall be posted in a prominent location in the licensed facility accessible to public view.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Section 1569.30, Health and Safety Code.

87116 PROGRAM FLEXIBILITY**87116**

- (a) The use of alternate concepts, programs, services, procedures, techniques, equipment, space, personnel qualifications or staffing ratios, or the conduct of experimental or demonstration projects shall not be prohibited by these regulations provided that:
- (1) Such alternatives shall be carried out with provisions for safe and adequate services.
 - (2) A written request for a waiver or exception and substantiating evidence supporting the request shall be submitted in advance to the licensing agency by the applicant or licensee.
 - (3) Prior written approval of the licensing agency shall be received.
 - (A) In determining the merits of each request, the licensing agency shall use as guidelines the standards utilized or recommended by well-recognized state and national organizations as appropriate.
 - (B) The licensing agency shall provide written approval or denial.
- (b) Unless prior written approval of the licensing agency is received, all community care facilities shall maintain continuous compliance with the licensing regulations.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.30 and 1569.31, Health and Safety Code.

87117 APPLICANT/LICENSEE MAILING ADDRESS**87117**

The applicant or licensee shall file his/her mailing address, in writing, with the licensing agency and shall notify the agency, in writing, of any change within 10 calendar days.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.15, 1569.20, 1569.22, 1569.30 and 1569.51, Health and Safety Code.

87118 NONDISCRIMINATION**87118**

- (a) All licensed facilities shall receive persons on a nondiscriminatory basis according equal treatment and services without regard to race, color, religion, national origin or ancestry.
- (b) An exception shall be made in the case of any bona fide nonprofit religious, fraternal or charitable organization which can demonstrate to the satisfaction of the Department or the licensing agency that its primary or substantial purpose is not to evade this section.
 - (1) It may establish reception policies limiting or giving preference to its own members or adherents, provided, however, such membership is nondiscriminatory and such policies shall not be construed as a violation of this section.
 - (2) Any reception of nonmembers or nonadherents shall be subject to the requirements of this section.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.30 and 1569.31, Health and Safety Code.

87124.1 FACILITY HOSPICE CARE WAIVER**87124.1**

- (a) In order to retain terminally ill residents and permit them to receive care from a hospice agency, the licensee shall have obtained a facility hospice care waiver from the Department. To obtain this waiver the licensee shall submit a written request for a waiver to the Department on behalf of any future residents who may request retention and hospice services in the facility. The request shall include, but not be limited to the following:
 - (1) Specification of the maximum number of terminally ill residents which the facility wants to have at any one time.
 - (2) A statement by the licensee that they have read Section 87124.1, Section 87716, and all other requirements within Chapter 8 of Title 22 of the California Code of Regulations governing Residential Care Facilities for the Elderly and that they will comply with these requirements.

87124.1 FACILITY HOSPICE CARE WAIVER
(Continued)**87124.1**

- (3) A statement by the licensee that the terms and conditions of all hospice care plans which are designated as the responsibility of the licensee, or under the control of the licensee, shall be adhered to by the licensee.
- (4) A statement by the licensee that hospice services will only be provided for persons who have resided in the facility for at least six months prior to the physician's order for hospice services.
- (b) The Department shall deny a waiver request if the licensee is not in substantial compliance with the provisions of the Residential Care Facilities for the Elderly Act (Health and Safety Code Section 1569 et seq.) and the requirements of Chapter 8 of Title 22 of the California Code of Regulations governing Residential Care Facilities for the Elderly.
- (c) No waiver request will be approved unless the facility demonstrates the ability to meet the care and supervision needs of terminally ill residents, and states a willingness to provide additional care staff if required by the hospice care plan.
- (d) If the Department grants a hospice care waiver it shall stipulate terms and conditions of the waiver as necessary to ensure the well-being of terminally ill residents and of all other facility residents, which shall include, but not be limited to, the following requirements:
 - (1) A written request shall be signed by each terminally ill resident or the resident's health care surrogate decision maker to allow his or her retention in the facility while receiving hospice services.
 - (A) The request shall be maintained in the resident's record at the facility, as specified in Section 87716(h)(1).
 - (2) The licensee shall notify the Department in writing within five working days of the initiation of hospice care services in the facility for any terminally ill resident. The notice shall include the resident's name and date of admission to the facility and the name and address of the hospice.
- (e) The Department shall review waiver requests as specified in Section 80024.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.1, 1569.2, 1569.10, 1569.11, 1569.15, 1569.30, 1569.31, 1569.312, 1569.54, and 1569.73, Health and Safety Code.